

## Age-Specific Rules and Risks to Associations

It is not uncommon to see signs posted in communities which say: “No Children Under 18 May Use the \_\_\_\_\_” Insert the amenity: pool, clubhouse, exercise room, etc. Many communities also adopt rules which limit the use of facilities to adults or limit the use of the facilities by children to those who are accompanied by an adult. When an association’s attorney tells his client that such signs may be discriminatory and expose the association to liability under housing anti-discrimination laws, we often hear comments about the risk of injuries to children and other reasons to justify the age-specific rules. The unfortunate reality is, adopting age-specific rules may be more problematic than the risk of claims for the very injuries the rules are intended to avoid.

Adopting reasonable rules to help limit exposure to personal injury claims is often a balancing act with trying to limit exposure to age discrimination claims under the Florida and federal Fair Housing Acts. It is a challenge to do both. There is no amount of signage which will prevent an association from getting sued if someone, regardless of age, is injured while using the pool, exercise facilities or any other portion of the common facilities if it can be proven that the association was negligent in some way. The nature of personal injury law today is that claimants will often bring a claim regardless of whether there was a warning or even a signed waiver (that is a matter for another article). On the other hand, an association could be forced to defend a claim under the Florida or federal Fair Housing Act for having rules and a sign if they are construed to be discriminatory, even if no one is specifically injured. An association attorney’s recommendation to remove all age-specific rules is often intended to provide as close to complete protection from at least one class of plaintiffs (those whose claim is based on housing discrimination) even though nothing can be done to assure complete protection against all classes of plaintiffs.

There are instances where the Department of Housing and Urban Development (HUD), the agency that enforces the Fair Housing Act, has held that reasonable rules that are age-specific may be construed as non-discriminatory where they are tied to legitimate safety considerations. Prohibiting use *entirely* by those under 18 is nearly always construed as discriminatory. There have been cases where rules requiring adult supervision during use of pools and fitness equipment by users under 18 have been considered reasonable since they were considered to be based on legitimate safety concerns. For associations, it is not just the risk of being held liable for discrimination that is troubling, it is the cost of defending the claim that can be costly, particularly if there is no insurance for such claims.

Provided your board recognizes that including age-specific rules requiring adult supervision *may* draw discrimination complaints which would require the Association to defend and prove the relationship between the rule and safety considerations, it may include those rules among its approved rules. It is important to be sure that any age-specific rules are legitimately intended to be related to safety concerns and not based on other factors such as the potential for children to disturb other residents or users of the facilities.

In a 2012 discrimination case brought in United States District Court by a family against the owner of their rental property in California, the court held that the property owner's rules were discriminatory on their face under federal law and were not sufficiently based upon concerns for the safety of children to avoid a judgment against the owner. In that case, the owner had posted signs such as "Children on the premises are to be supervised by a responsible adult at all times," "Children under the age of 18 are not allowed in the pool or pool area at any time unless accompanied by their parents or legal guardian," In addition, the owner established a curfew rule which stated: "When the building lights come on all children are to be in their apartments. This is for the protection of the children and respect of your neighbors. Knott Village Apartments is a quiet complex and we must insist the children play in a place more suitable for them." The court held that the rules and policies were "overbroad efforts to address Defendants' [the property owner's] purported safety concerns. For example, they require children to be supervised by an adult even during the day, and even when the children are not near any potentially dangerous areas. These policies are also not the least restrictive means to address any noise concerns. Indeed, children might make noise even if their parents are present. More appropriate policies might have simply prevented children from playing near the gates or on the rooftops, or required all residents to maintain a certain noise level."

If your board currently has or is considering age-specific rules about the use of the community's facilities, a consultation with an experienced community association attorney should be considered to evaluate the risks.

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